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Report of the Expert Mechanism on the Rights of Indigenous Peoples on its eighth session, Geneva, 20-24 July 2015

Chair-Rapporteur: Alexey Tsykarev

Summary

The Expert Mechanism on the Rights of Indigenous Peoples held its eighth session from 20 to 24 July 2015. In addition to members of the Expert Mechanism, the participants in the session included representatives of States, parliaments, indigenous peoples, United Nations bodies, programmes and specialized agencies, non-governmental organizations, national human rights institutions and academic institutions.

The Expert Mechanism discussed follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism, and held a panel discussion on indigenous peoples' human rights in relation to business enterprises. It discussed the post-2015 development agenda, before moving to a discussion on the follow-up to thematic studies and advice.

The Expert Mechanism's study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage was considered. Discussions on the United Nations Declaration on the Rights of Indigenous Peoples were also held, as well as a consultation on the United Nations system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration.

The Expert Mechanism adopted the proposals to be submitted to the Human Rights Council at its thirtieth session. In particular, it adopted the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, and the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

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I. Introduction

1. In its resolution 6/36, the Human Rights Council established the Expert Mechanism on the Rights of Indigenous Peoples as a subsidiary body to assist the Council in the implementation of its mandate by providing it with thematic expertise on the rights of indigenous peoples, as requested by the Council. In the resolution, the Council established that the thematic expertise would focus mainly on studies and research-based advice, and that the Expert Mechanism may suggest proposals to the Council for its consideration and approval.

II. Adoption of studies, reports and proposals

2. The Expert Mechanism adopted its study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage and the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices with regard to possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

A. Adoption of the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage

3. The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Refers to paragraph 5 of Human Rights Council resolution 27/13, in which the Council requested the Expert Mechanism to prepare a study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, including through their participation in political and public life, and to present it to the Council at its thirtieth session;

(b) Adopts the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage (A/HRC/EMRIP/2015/2);

(c) Authorizes the Chair-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the study in the light of discussions carried out at its eighth session and to submit the final study to the Human Rights Council at its thirtieth session.

B. Adoption of the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples

4. The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Refers to paragraph 6 of Human Rights Council resolution 27/13, in which the Council requested the Expert Mechanism to continue to undertake, with the assistance of the Office of the United Nations High Commissioner for Human Rights, the questionnaire survey to seek the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies in order to attain the end goals of the United Nations Declaration on the Rights of Indigenous Peoples, with a

view to completing a final summary of responses for presentation to the Human Rights Council at its thirtieth session;

(b) Adopts the updated report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/EMRIP/2015/CRP.1);

(c) Authorizes the Chair-Rapporteur, in consultation with the other members of the Expert Mechanism, to make the necessary revisions to the report in the light of discussions carried out at its eighth session and to submit the report to the Human Rights Council at its thirtieth session.

C. Proposals

Proposal 1: Theme of the Expert Mechanism's next study

5. The Expert Mechanism on the Rights of Indigenous Peoples proposes to the Human Rights Council that it authorize the Expert Mechanism to undertake a study on one of the following themes:

(a) Discrimination facing indigenous peoples in business and access to financial services, with specific reference to indigenous women entrepreneurs;

(b) The right of indigenous peoples to health, with a focus on children and youth;

(c) The role of indigenous peoples' organizations and civil society, including human rights defenders, in the promotion and protection on the rights of indigenous peoples.

Proposal 2: Half-day panel discussion at the thirty-third session of the Human Rights Council

6. The Expert Mechanism on the Rights of Indigenous Peoples proposes to the Human Rights Council that it organize at its thirty-third session a half-day panel discussion on violence against indigenous women and girls, bearing in mind the importance attached to that theme in the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (see General Assembly resolution 69/2, paras. 18 and 19).

Proposal 3: Follow-up to the World Conference on Indigenous Peoples

7. The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Proposes to the Human Rights Council that it include the Expert Mechanism in and take into consideration its views during the review of the mandate of the Expert Mechanism, taking into account the views of indigenous peoples, as indicated in paragraph 28 of the outcome document of the World Conference on Indigenous Peoples;

(b) Urges the Human Rights Council to take measures to ensure that the Expert Mechanism is provided with additional human and financial resources commensurate with its new mandate, including for intersessional activities;

(c) Proposes to the Human Rights Council that it urge Member States to cooperate with indigenous peoples to develop and implement national action plans, strategies or other measures, where relevant, to achieve the ends of the Declaration, as indicated in paragraph 7 of the outcome document of the World Conference on Indigenous Peoples;

(d) Also proposes to the Human Rights Council that it encourage States to follow up on paragraph 10 of the outcome document of the World Conference on Indigenous Peoples, in which they committed themselves to working with indigenous peoples to disaggregate data, as appropriate, or conduct surveys and to utilizing holistic indicators of indigenous peoples' well-being to address the situation and needs of indigenous peoples and individuals, in particular older persons, women, youth, children and persons with disabilities.

Proposal 4: Reporting to the General Assembly

8. The Expert Mechanism on the Rights of Indigenous Peoples proposes to the Human Rights Council that it request the Expert Mechanism to report to the General Assembly on a biennial basis, in addition to its annual reporting to the Council.

Proposal 5: Business and human rights

9. The Expert Mechanism on the Rights of Indigenous Peoples proposes to the Human Rights Council that it take measures to include the Expert Mechanism in the Council's ongoing initiatives relating to business and human rights.

Proposal 6: Post-2015 development agenda

10. The Expert Mechanism on the Rights of Indigenous Peoples proposes that the Human Rights Council urge States to take measures to ensure the participation of indigenous peoples, in particular indigenous youth, in national processes for the implementation of the new development goals.

Proposal 7: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

11. The Expert Mechanism on the Rights of Indigenous Peoples:

(a) Proposes that the Human Rights Council urge States and indigenous peoples to report on the measures taken to implement the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples, by reporting to the Expert Mechanism on actions they have taken to implement the commitments listed in the outcome document of the World Conference on Indigenous Peoples, in particular those referred to in paragraph 8, in which Member States commit themselves to cooperating with indigenous peoples to develop and implement national action plans, strategies or other measures to achieve the ends of the Declaration;

(b) Reiterates its proposal that the Human Rights Council review the language and terminology used in United Nations documents pertaining to the rights of indigenous peoples with a view to ensuring that they reflect the terminology contained in the United Nations Declaration on the Rights of Indigenous Peoples. It calls upon the United Nations and other international organizations to review their spelling rules with a view to using initial capital letters in spelling the term "indigenous peoples" (see A/HRC/24/49, para. 9);

(c) Proposes that the Council urge Member States to contribute to the United Nations Voluntary Fund for Indigenous Peoples and acknowledge the work the Fund has achieved in the 30 years since its establishment.

III. Organization of the session

A. Attendance

12. The Expert Mechanism on the Rights of Indigenous Peoples held its eighth session in Geneva, from 20 to 24 July 2015. The members of the Expert Mechanism — Albert Kwokwo Barume (Democratic Republic of the Congo), Albert Deterville (Saint Lucia), International Chief Wilton Littlechild (Canada), Edtami Mansayagan (Philippines) and Alexey Tsykarev (Russian Federation) — took part in the session.

13. The participants in the eighth session of the Expert Mechanism included representatives of Member States, parliaments, indigenous peoples, United Nations programmes, bodies and specialized agencies, national human rights institutions, non-governmental organizations and academic institutions (see annex I).

14. Also participating in the session were Victoria Tauli-Corpuz, the Special Rapporteur on the rights of indigenous peoples, Megan Davis, the Chair of the Permanent Forum on Indigenous Issues, Claire Charters, a member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples, and Francisco Cali Tzay, the Chair of the Committee on the Elimination of Racial Discrimination. The Assistant Secretary-General for Economic Development participated in the sessions on agenda item 3: Follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism.

B. Documentation

15. The Expert Mechanism had before it the provisional agenda and annotations thereto (A/HRC/EMRIP/2015/1 and Add.1), as prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage.

16. The Expert Mechanism also had before it the following conference room papers: the updated draft report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/EMRIP/2015/CRP.1); the report of the open-ended meeting of indigenous peoples on the follow-up to the World Conference on Indigenous Peoples (A/HRC/EMRIP/2015/CRP.2); the submission from the monitoring mechanism regarding the implementation of the United Nations Declaration on the Rights of Indigenous Peoples in Aotearoa/New Zealand (A/HRC/EMRIP/2015/CRP.3); the compilation of calls to action issued by the Truth and Reconciliation Commission of Canada relating to the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/EMRIP/2015/CRP.4); and the update on the first World Indigenous Peoples' Games (A/HRC/EMRIP/2015/CRP.5).

C. Opening of the session

17. Mr. Deterville, the outgoing Chair-Rapporteur of the Expert Mechanism, opened the eighth session of the Expert Mechanism and welcomed the United Nations High Commissioner for Human Rights and the President of the Human Rights Council.

18. The High Commissioner for Human Rights welcomed all participants and highlighted some key recent and future events that would have a significant bearing on the

rights of indigenous peoples, including the Special Summit on Sustainable Development. Several challenges affected indigenous peoples, including the denial of their right to self-determination, discrimination in education and access to justice and exclusion from public life, all of which led to chronic marginalization. Extractive industries and industrial-scale agriculture had led to violations of indigenous peoples' rights to their lands, their right to a clean environment, and free, prior and informed consent.

19. The High Commissioner reminded participants of the commitments made by States at the World Conference on Indigenous Peoples, highlighting some positive developments, such as the report of the Truth and Reconciliation Commission of Canada, but noting that few States had followed up on the commitment to develop action plans to implement the Declaration on the Rights of Indigenous Peoples. He cited examples of his Office's work in advancing the rights of indigenous peoples, focusing on capacity-building, protection and support for activists defending the rights of indigenous peoples. He closed by referring to the review of the mandate of the Expert Mechanism, emphasizing that the review must be coupled with a commitment to follow up on recommendations, together with indigenous peoples.

20. In his opening statement, the President of the Human Rights Council recognized the work of the Expert Mechanism and noted that its studies and advice had been well received by the Council and had contributed positively to the efforts to further the protection of the rights of indigenous peoples. He was grateful to the Expert Mechanism for the study to be presented at the current session. The Council attached great importance to the United Nations Declaration on the Rights of Indigenous Peoples, including within the framework of the universal periodic review. Emphasizing that the Council was ready to undertake the review of the mandate of the Expert Mechanism, as requested in the outcome document of the World Conference on Indigenous Peoples, he hoped that the process would result in a more robust mandate for the Expert Mechanism. He also emphasized the importance of indigenous peoples' participation in relevant United Nations processes and forums.

D. Election of officers

21. Mr. Deterville invited the members of the Expert Mechanism to nominate a Chair-Rapporteur and Vice-Chair-Rapporteur for its eighth session. Mr. Barume nominated Mr. Tsykarev as Chair-Rapporteur, and International Chief Littlechild and Mr. Deterville as Vice-Chairs-Rapporteurs. All three were then appointed by acclamation.

22. The Chair-Rapporteur, Mr. Tsykarev, thanked the other members of the Expert Mechanism for his election. He welcomed the new member of the Expert Mechanism, Mr. Barume.

23. The Chair-Rapporteur highlighted the work of the Expert Mechanism since the last session. That had included the study on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. The study was informed by an expert seminar jointly organized by the University of Lapland (Finland) and OHCHR. The Chair-Rapporteur discussed the Expert Mechanism's work on the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples.

24. The Chair-Rapporteur then outlined the Expert Mechanism's activities during the year, including its participation in the World Conference on Indigenous Peoples and in the fourteenth session of the United Nations Permanent Forum on Indigenous Issues. He drew attention to the Expert Mechanism's first intersessional meeting, which had been held at the Canadian Museum for Human Rights in Winnipeg, Canada in March 2015, and thanked the

Government of Canada for its support for that initiative. He provided an overview of the agenda of the session and invited participants to contribute actively to the deliberations.

E. Adoption of the agenda

25. The Expert Mechanism adopted the agenda and annotations thereto, containing the programme of work of the eighth session.

IV. Follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism

26. Mr. Deterville recalled that the General Assembly, in the outcome document of the World Conference on Indigenous Peoples, invited the Human Rights Council, taking into account the views of indigenous peoples, to review the mandates of its existing mechanisms, in particular the Expert Mechanism on the Rights of Indigenous Peoples, with a view to modifying and improving the Expert Mechanism so that it could more effectively promote respect for the Declaration on the Rights of Indigenous Peoples, including by better assisting Member States to monitor, evaluate and improve the achievement of the ends of the Declaration (para. 28).

27. Mr. Deterville presented some preliminary ideas for the review of the mandate, which had been agreed upon by the members of the Expert Mechanism, including the following:

- The Expert Mechanism should remain a subsidiary body of the Human Rights Council and maintain some elements of its current mandate, including the provision of thematic studies;
- The Expert Mechanism should play a stronger role in terms of facilitating the implementation of the Declaration at the national and international levels. That should include supporting States in the preparation of national strategies for the implementation of the Declaration and engaging with the private sector in order to overcome obstacles to the implementation of the Declaration;
- The Expert Mechanism should have an increased role in facilitating dialogue between States and indigenous peoples to discuss issues of mutual concern. That should also include engagement with regional organizations and national human rights institutions;
- The Expert Mechanism should engage more actively with the universal periodic review, the special procedures and the human rights treaty bodies. That should include assisting States to implement recommendations relating to indigenous peoples issued by those mechanisms and serving as a bridge between indigenous peoples and the United Nations human rights system;
- The Expert Mechanism should continue to collect and disseminate information on good practices in the implementation of the Declaration, and issue general comments regarding the provisions of the Declaration.

28. The Assistant Secretary-General for Economic Development reported on follow-up to the World Conference on Indigenous Peoples. The Secretary-General was developing a system-wide action plan, in collaboration with indigenous peoples, to ensure a coherent approach to achieving the ends of the Declaration on the Rights of Indigenous Peoples. Barriers to implementation did not necessarily relate to lack of coordination within the

United Nations system, but rather to issues such as lack of political will to implement the rights of indigenous peoples, including land rights; lack of a common understanding of the key terms in the Declaration and of the meaning and interpretation of the rights contained therein; and lack of disaggregated data collection.

29. Referring to the commitment of States to consider ways to enable the participation of indigenous peoples' representatives and institutions in meetings of relevant United Nations bodies on issues affecting them (outcome document, para. 33), he noted that good practices were currently being reviewed. He recalled that the report of the Secretary-General on progress made in the implementation of the outcome document (A/70/84) contained the proposal that the President of the General Assembly could appoint co-facilitators or advisers, including indigenous representatives, to lead an open-ended consultation process on indigenous peoples' participation at the United Nations.

30. The Special Rapporteur on the Rights of Indigenous Peoples, establishing links between the World Conference on Indigenous Peoples and the post-2015 development agenda, suggested that the operationalization of the outcome document of the World Conference was critical in ensuring that indigenous peoples were not left behind in the implementation of the new development goals. Echoing the concerns of many other participants, the Special Rapporteur stated that formulating national action plans would be key to implementing the commitments States had made in the outcome document. With regard to the review of the mandate of the Expert Mechanism, she noted that there was broad consensus among many State representatives on enhancing the capacity of the United Nations mechanisms on indigenous peoples to advise States on the implementation of the Declaration on the Rights of Indigenous Peoples and the outcome document of the World Conference.

31. Representatives of States and indigenous peoples reaffirmed their strong support for the contribution of the Expert Mechanism in improving the rights of indigenous peoples. Many representatives supported the call for a strengthened mandate for the Expert Mechanism to improve further the rights of indigenous peoples. Specific recommendations included broadening the mandate to include a function to monitor the implementation of the Declaration that would promote and protect the rights enshrined therein and discourage violations; preparing reports on the implementation of the Declaration; issuing general comments and interpretations on the provisions of the Declaration; providing technical assistance on implementation to States, indigenous peoples, the United Nations system and the private sector; and collecting and disseminating information on good practices. Many representatives recommended that any broadening of the mandate should not result in a duplication of the mandates of either the Special Rapporteur on the rights of indigenous peoples or the Permanent Forum on Indigenous Issues. Securing additional financial resources for the possible increased role of the Expert Mechanism was also considered vital.

32. Significant emphasis was placed on States' commitment to take action to achieve the ends of the Declaration at the national level, through legal, policy and administrative measures, particularly national action plans and strategies. Positive examples were provided, including budgetary reviews Governments had carried out to evaluate the policy, administrative and legislative changes needed to implement the Declaration, and indigenous forums that had been established at the national level to monitor implementation.

33. In addition to the review of the mandate of the Expert Mechanism several participants commented on other aspects of follow-up to the World Conference, particularly the participation of indigenous peoples in United Nations processes. Several indigenous representatives supported the call for a new accreditation procedure to ensure the direct, meaningful and effective participation of indigenous peoples, based on mutual respect and partnerships between indigenous peoples and States, in accordance with article 18 of the

Declaration. Participants highlighted the need for selection criteria that differentiated indigenous peoples from civil society and academics.

34. It was also recommended that the Human Rights Council take up the invitation contained in the outcome document to consider examining the causes and consequences of violence against indigenous women and girls, including by holding a panel discussion on the rights of indigenous women and by encouraging the Secretary-General to issue specific recommendations for action to address that issue. Some participants highlighted the need to be cognizant of the multiple forms of discrimination faced by indigenous persons with disabilities and to ensure that indigenous persons with disabilities were always taken into consideration by human rights mechanisms.

V. Panel discussion on indigenous peoples' human rights in relation to business enterprises

35. Mr. Barume opened the panel discussion on indigenous peoples' rights in relation to business enterprises by welcoming participants and introducing the panellists. He drew attention to the Expert Mechanism's work on that subject, including the follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries (A/HRC/21/55).

36. The OHCHR Adviser on Business and Human Rights provided an overview of the Guiding Principles on Business and Human Rights. She discussed the historical background to the Guiding Principles and its key elements: the State's duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy for victims. She provided examples of how both States and enterprises had implemented the Guiding Principles. She highlighted opportunities for indigenous peoples within that process, including the use of the framework for advocacy and policy development and indigenous peoples' participation in national action plan processes.

37. Pavel Sulyandziga, a member of the Working Group on the issue of human rights and transnational corporations and other business enterprises, emphasized the importance of dialogue between all stakeholders: indigenous peoples, businesses and States. He discussed the work of the Working Group in promoting the effective implementation of the Guiding Principles on Business and Human Rights, including through the development of national action plans, and urged indigenous peoples to use that instrument as a tool for the protection of their rights at the national and international levels. He also drew attention to the fact that, in its reports to the Human Rights Council and the General Assembly, the Working Group had addressed the impact of business enterprises on the rights of indigenous peoples. He emphasized the importance of free, prior and informed consent and stressed that the implementation of the Guiding Principles should be informed by the United Nations Declaration on the Rights of Indigenous Peoples. He encouraged indigenous peoples to participate in the Forum on Business and Human Rights, which would take place in Geneva from 16 to 18 November 2015. He stressed that the endorsement of national action plans on business and human rights could lead to national discussions on human rights violations linked to business and could also become valuable remedy tools.

38. Agnes Leina, a representative of the Indigenous Peoples of Africa Coordinating Committee, provided a regional perspective from Africa, focusing on potential risks to indigenous peoples stemming from extractive industries and the Programme for Infrastructure Development in Africa, supported by the African Development Bank, among others. She emphasized the fact that, under the current development model in Africa, the gains from extractive industry and infrastructure development tended to benefit a small

group of investors, while the losses, such as environmental damage, depletion of natural resources and displacement of communities, were borne by society or the community as a whole. She highlighted the importance of including all stakeholders when investment decisions were made, including indigenous peoples, and of creating a climate of dialogue between all stakeholders.

39. Luis Vittor, a representative of the Coordinadora Andina de Organizaciones Indígenas, also focused on the impact of extractive industries and infrastructure megaprojects on the rights of indigenous peoples. Using two case studies from Latin America, he illustrated how extractive industries could negatively impact the rights of indigenous peoples to their lands, territories and resources, their right to health, cultural rights and the right to determine their own priorities for development. He pointed out that one of the main challenges faced by indigenous peoples with regard to extractive industries was access to remedy. He emphasized that, while there were useful instruments, such as the Guiding Principles on Business and Human Rights and the Declaration on the Rights of Indigenous Peoples, the implementation gap remained enormous, which was having dire consequences for indigenous peoples.

40. Famark Hlawncheng, the Chair of the Asia Indigenous Peoples Pact, presented a regional perspective from Asia. He stressed the importance of free, prior and informed consent, a principle that was often violated by business enterprises. He illustrated with examples how infrastructure and extractive projects often resulted in forced evictions, harassment of indigenous human rights defenders, and sometimes in enforced disappearances or extra-judicial killings. He pointed out that indigenous peoples faced barriers in access to justice in relation to those situations owing to limited financial resources, biased judicial systems and limited access to redress mechanisms.

41. Following the panel discussion, participants raised questions regarding possibilities for indigenous communities to have meaningful dialogue with business corporations and extractive industries. The panellists indicated that developing mechanisms for implementing the Guiding Principles on Business and Human Rights at the national level could be one of the ways of addressing indigenous peoples' concerns.

42. Statements from indigenous participants reflected a widespread pattern of human rights violations against indigenous peoples, raising many of the concerns discussed by the panellists, such as lack of free, prior and informed consent; lack of access to remedies; and the negative impact of extractive industries on rights to lands, territories and resources. They also highlighted the criminalization of protests by indigenous peoples as a growing concern.

43. In view of the range of violations faced by indigenous peoples, some participants considered a binding international instrument on business and human rights crucial for providing remedies for affected communities.

44. Mr. Barume thanked all the panellists and participants for contributing to the discussion. With specific reference to Africa, he pointed out that the historical and persistent non-recognition of traditional land rights of African indigenous communities was a contributing factor to indigenous peoples' particular vulnerability to transnational corporations and other business enterprises. He indicated that stronger and legally protected rights of indigenous peoples over their lands were critical to the implementation of free, prior and informed consent. He drew a parallel with the recent landmark decision by the Supreme Court of Belize, which had ruled in favour of Maya land rights, affirming constitutional protection for their ancestral land rights and making explicit reference to the United Nations Declaration on the Rights of Indigenous Peoples. The ruling had affirmed that the right to free, prior and informed consent was a fundamental tenet of traditional land

tenure before extractive operations were undertaken on the territory of the Maya communities.

45. He indicated that national human rights institutions could be play a key role at the national level in the implementation of the Guiding Principles on Business and Human Rights. He emphasized the need to engage chambers of commerce as relevant stakeholders at the national level during discussions about business enterprises and human rights.

46. Mr. Tsykarev supported the establishment of national action plans on business and human rights, which should include legislative efforts, codification and systematization of national laws linked to indigenous peoples and business enterprises. Those efforts would also facilitate the harmonization of legislation at all levels. He underlined the connections between the cultural rights of indigenous peoples and the influence of industries, which was highlighted in the study of the Expert Mechanism on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. He proposed making use of the capacity of the Expert Mechanism to facilitate a sustainable process of consultation between indigenous peoples, governments and businesses. He suggested organizing a side event at the forthcoming Forum on Business and Human Rights on indigenous peoples' human rights and business enterprises.

VI. Post-2015 development agenda and indigenous peoples' rights

47. Mr. Mansayagan, opening the discussion, pointed out some of the gaps in the post-2015 development goals from the perspective of indigenous peoples. He stated that the post-2015 development agenda would constitute the international community's road map for development in the forthcoming years. Referring to the conclusion of the panel discussion during the seventh session of the Expert Mechanism, he outlined some key elements, such as the need to fully integrate indigenous peoples' perspectives into the post-2015 development agenda; the need for indicators of well-being and sustainability instead of purely economic indicators; and the need to recognize the right to free, prior and informed consent. He highlighted the fact that, following a proposal from the Expert Mechanism, the Human Rights Council had encouraged States to give due consideration to all the rights of indigenous peoples in the process of the elaboration of the post-2015 development agenda and to take measures to ensure the participation of indigenous peoples, and in particular indigenous youth, in national processes for the implementation of the new development goals (Council resolution 27/13, para. 15). He expressed concern at the absence of references to free, prior and informed consent in the final draft of the goals, and at the fact that indigenous peoples were grouped together with other vulnerable sectors of society.

48. Indigenous representatives regretted the fact that their concerns had been inadequately reflected in the final draft of the sustainable development goals and the fact that indigenous peoples were explicitly mentioned under only two targets (goal 2 and goal 4). The new development goals must reflect the concerns of indigenous people , in line with the Declaration on the Rights of Indigenous Peoples. Some participants stated that national human rights institutions could be instrumental partners in ensuring that indigenous peoples participated in national-level plans and strategies for the implementation of the new goals. Participants commended the priority given to disaggregated data in the post-2015 development goals and stressed the need to include such data across all relevant indicators and targets of the 17 goals.

VII. Follow-up to thematic studies and advice

49. Mr. Mansayagan recalled the mandate of the Expert Mechanism and listed the studies and advice it had issued previously. He recalled that the studies and advice were intended to provide a better understanding of the provisions of the Declaration on the Rights of Indigenous Peoples and to suggest specific action that States, indigenous peoples, civil society, international organizations, national human rights institutions and others could take in order to further its implementation. He noted that the studies of the Expert Mechanism placed special emphasis on the participation of indigenous peoples themselves in decisions that affected them.

50. A representative of the Indigenous Persons with Disabilities Global Network acknowledged the usefulness of the previous studies of the Expert Mechanism as guidance tools for advocacy and policy development. The Network suggested that the Expert Mechanism consult indigenous persons with disabilities in the development of its future studies and advice.

51. Mr. Tsykarev urged States to ensure that initiatives that had been identified as good practices in previous studies of the Expert Mechanism were not weakened. He encouraged both States and indigenous peoples to use the opportunity afforded by the agenda item to keep the Expert Mechanism abreast of recent developments regarding the themes of its previous studies.

VIII. Study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage

52. Mr. Tsykarev expressed his gratitude to the University of Lapland, which had, jointly with OHCHR, organized an expert seminar on the topic of the study in February 2015. He thanked all the experts who had participated in the seminar for their valuable contribution to the study and all the States, indigenous peoples' organizations, non-governmental organizations and national human rights institutions that had provided submissions to the study. He gave a detailed overview of the study, focusing on the advice with respect to cultural heritage that the Expert Mechanism had provided to States, indigenous peoples, international organizations and museums.

53. The draft of the study was well received by representatives of State and indigenous peoples. Participants commended the Expert Mechanism for highlighting the holistic and intergenerational nature of cultural heritage, and emphasizing the links between cultural heritage and lands, territories and resources. Indigenous representatives also welcomed the emphasis placed on free, prior and informed consent in relation to cultural and natural heritage. Given the alarming pace at which indigenous languages were being lost, several participants drew attention to the need to preserve and promote indigenous languages through effective mother tongue education programmes. Participants also requested the Expert Mechanism to pay special attention to the need to revitalize the customary practices and traditional governance systems of indigenous peoples.

54. Many participants highlighted the fact that, in paragraph 27 of the outcome document of the World Conference, States committed themselves to developing fair, transparent and effective mechanisms for access to and repatriation of ceremonial objects and human remains. During the discussion, indigenous representatives discussed several cases in which they had been unable to recover ceremonial objects, human remains and other articles related to their heritage from museums, collectors and other repositories.

55. Representatives of States recognized the importance of revitalizing and preserving the cultural heritage of indigenous peoples and discussed many ongoing measures in their respective countries. They highlighted specific legislative measures, support for education in native/mother tongues, the establishment of institutions for promoting indigenous cultures, budget allocations for the preservation of indigenous art and culture, along with research and studies on the contribution of indigenous cultural heritage to mainstream society. Similarly, national human rights institutions shared some exemplary action they had taken to protect and promote indigenous peoples' right to cultural heritage.

56. Mr. Barume remarked that Convention concerning the Protection of the World Cultural and Natural Heritage of the United Nations Educational, Scientific and Cultural Organization (UNESCO) had huge potential to strengthen the protection of indigenous peoples' rights. However, in order for that to be put into practice, UNESCO and its World Heritage Committee must align their policies and programmes with the international human rights standards relating to indigenous peoples, including regional and national instruments. He regretted the fact that the World Heritage Committee had declared World Heritage Sites in many parts of the world in a manner that did not respect international standards that safeguarded indigenous peoples' rights, particularly the principle of free, prior and informed consent. To address that gap, he called upon UNESCO, the World Heritage Committee and other relevant organizations to strengthen their knowledge on indigenous peoples' rights through training and awareness-raising activities. He also called upon Member States to evaluate and recognize the contribution that indigenous peoples' cultural heritage made to national economies.

IX. United Nations Declaration on the Rights of Indigenous Peoples

57. International Chief Littlechild provided an overview of the Expert Mechanism's work in the area of the United Nations Declaration on the Rights of Indigenous Peoples, including a review of the final summary of the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the Declaration. He thanked the staff of the Faculty of Law at the University of Manitoba for their assistance in preparing the summary of the responses, and all the States and indigenous peoples who had responded. He referred to the World Conference on Indigenous Peoples as a significant step forward for the recognition of the rights of indigenous peoples. He reminded States that the outcome document of the World Conference was a reaffirmation of their support for the Declaration and the commitments made therein.

58. Claire Charters, a member of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples, delivered a statement on behalf of the Board. She welcomed the thirty-two beneficiaries of the Fund present at the session and thanked the Member States that had contributed to the Fund. She highlighted the fact that 2015 marked the thirtieth anniversary of the Fund and that over the course of the 30 years, the Fund had supported the participation of 2,000 representatives at United Nations meetings. She pointed out the achievements of the beneficiaries of the Voluntary Fund and provided an overview of the Board of Trustees' activities in 2014-2015. She concluded by encouraging all Governments to consider supporting the work of the Fund.

59. Many participants noted that, while there had been significant progress, indigenous peoples remained among the most marginalized groups in many parts of the world. The systematic violation of the rights enshrined in the Declaration was ongoing and pervasive. A variety of obstacles and barriers to the implementation of the Declaration were identified by participants. They included the lack of political will and financial resources to

implement indigenous peoples' rights, misunderstandings regarding key terms in the Declaration, inconsistencies between State legislation and the Declaration, "rights ritualism" on the part of some States, a lack of awareness and a lack of capacity among relevant sectors of society. Furthermore, the refusal to recognize the status of some indigenous peoples had led to systematic violations of their human rights, in particular rights to lands, territories and resources, identity, culture and self-determination.

60. In addition, participants identified an urgent need for States to intensify their efforts to achieve the ends of the Declaration and implement the rights contained therein, including the principle of free, prior and informed consent; lands, territories and resources rights; treaty rights; self-determination; cultural rights; and the right to participate in decision-making.

61. It was emphasized that, in order to halt violations of the human rights of indigenous peoples and achieve the ends of the Declaration, the outcome document of the World Conference on Indigenous Peoples should be used as a guide for action and the realization of the rights of indigenous peoples. Importantly, it was noted that through the adoption of the outcome document, specifically paragraphs 3 and 4, States reaffirmed their solemn commitment to the rights contained in the Declaration.

62. Megan Davis, the Chair of the Permanent Forum on Indigenous Issues, highlighted forthcoming events and processes which would impact indigenous peoples and the implementation of the Declaration. They included: deliberations concerning the post-2015 development goals; the third International Conference on Financing for Development; the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change; negotiations at the World Intellectual Property Organization concerning traditional cultural expressions and traditional knowledge; the revision of the World Bank social and economic safeguards; and, of particular relevance in the light of the Expert Mechanism's recent study on cultural heritage, the World Heritage Committee's review of its operational guidelines on the nomination of World Heritage Sites.

63. On the issue of the involvement of indigenous peoples in such events, many participants advocated for the creation of a specific accreditation system for indigenous peoples' governing institutions. Participants stated that a unique accreditation mechanism would work to implement the right of indigenous peoples to participate in decision-making, and recognize the unique status of indigenous peoples' governing institutions. The mechanism should be governed by flexible modalities that took into account the unique circumstances of indigenous peoples globally.

64. Many participants emphasized that States should create national action plans for the achievement of the ends of the Declaration in partnership with indigenous peoples and consistent with the rights of the Declaration. The national action plans should incorporate awareness-raising programmes to promote widespread understanding of the Declaration, including through the media. It was also recommended that the universal periodic review should require States to report on the arrangements for national action plans and other measures to implement the Declaration.

65. Many participants noted that regional and national human rights institutions played an important role in the monitoring, protection and implementation of the rights of indigenous peoples. There was one example of indigenous peoples themselves taking steps at the national level to monitor the implementation of the Declaration. The Monitoring Mechanism of the National Iwi Chairs Forum from New Zealand/Aotearoa, which made its inaugural statement at the eighth session of the Expert Mechanism, provided a report on the implementation of the Declaration in New Zealand/Aotearoa (A/HRC/EMRIP/2015/CRP.3).

66. Many participants emphasized that increasing international tourism had often led to the violations of the rights of indigenous peoples to their lands, territories and resources, sacred sites and cultural locations, the right to self-determination and the right to determine their own development. Similarly, many participants discussed the negative effects of militarization, particularly acts of violence against and extra-judicial killings of indigenous peoples and the violations of their rights relating to traditional lands, territories and resources. They highlighted how militarization and development often combined to feed into serious and systematic violations of indigenous peoples' human rights.

X. Proposals to be submitted to the Human Rights Council

67. The Chair-Rapporteur invited observers to share their recommendations regarding the Expert Mechanism's proposals to the Human Rights Council.

68. Some participants provided suggested themes for future studies of the Expert Mechanism, including links between militarization, development and the rights of indigenous peoples and a study focusing on mechanisms for redress, remedies, restitution and repatriation in conformity with articles 11, 27, 28 and 40 of the Declaration. Other suggested themes included the ways in which national human rights institutions could aid in the promotion and protection of the rights of indigenous peoples; human rights violations impacting indigenous peoples in the field of tourism; and genocide and indigenous peoples.

69. There were some general proposals, including that the Expert Mechanism, through the Human Rights Council, should encourage treaty bodies and the Working Group on the Universal Periodic Review to scrutinize the reports and human rights records of States in order to address rights ritualism effectively. That should include ensuring that States claims were systematically compared to the concerns raised by indigenous peoples and civil society.

70 The Chair-Rapporteur suggested that the Expert Mechanism could examine actions and policies of financial institutions that had negative impacts on indigenous peoples' rights.

XI. Consultation on the United Nations system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration on the Rights of Indigenous Peoples

71. The eighth session provided the time for a consultation with States and indigenous peoples on the United Nations system-wide action plan to ensure a coherent approach to achieving the ends of the Declaration, as called for in paragraph 31 of the outcome document of the World Conference on Indigenous Peoples. The consultation was facilitated by the Department of Economic and Social Affairs, in cooperation with the Office of the United Nations High Commissioner for Human Rights.

72. A number of Member States expressed their support for the development of the action plan. Indigenous representatives, while also supportive of the development of the action plan, raised a number of concerns, including the need to catalogue and disseminate good practices of United Nations entities in relation to indigenous peoples and the need to address violence against indigenous women. They also stressed the importance of United Nations entities working more closely with indigenous peoples, consulting them and identifying specific focal points or offices that work on indigenous peoples' issues.

73. A number of speakers said that, although the action plan was to be developed within existing resources, that would constitute a major challenge to its implementation. The

Special Rapporteur on the rights of indigenous peoples noted that a number of United Nations entities had already developed specific policies on engagement with indigenous peoples, as a good practice that other entities could follow. However, she also noted that there were limited financial and human resources dedicated to indigenous peoples' issues within the United Nations system, and those resources were often difficult to measure.

74. The consultation served as a useful forum to clarify the following elements of the action plan:

- The action plan will focus on a limited number of clearly identifiable actions that the United Nations system will undertake within the next two years.
- According to the outcome document, the action plan is to be developed within existing resources. No financial resources have yet been committed to the implementation of the action plan. A possible element of the action plan may involve concerted fundraising efforts for projects, programmes and mechanisms that deal specifically with indigenous peoples.
- There is a general agreement that one of the major obstacles to the implementation of the Declaration on the Rights of Indigenous Peoples is a general lack of awareness of the Declaration among all stakeholders. Consequently, awareness-raising and advocacy will be an important element of the action plan.
- It is important to ensure coherence between the normative work at headquarters and the programmatic work at the country level. To this effect, the United Nations Development Group Guidelines on Indigenous Peoples' Issues were adopted on 1 February 2008. Those Guidelines are a valuable tool and the action plan will take advantage of this as well as other existing mechanisms.
- It is important to strengthen the capacities of indigenous peoples to help ensure the implementation of the Declaration.
- The action plan should also invigorate efforts to strengthen the capacities of United Nations staff to work on issues related to indigenous peoples.

XII. Adoption of reports, studies and proposals

75. At the last meeting of its eighth session, the Expert Mechanism adopted its study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage, including through their participation in political and public life, and the report summarizing the responses to the questionnaire seeking the views of States and indigenous peoples on best practices regarding possible appropriate measures and implementation strategies to attain the goals of the United Nations Declaration on the Rights of Indigenous Peoples. All proposals were adopted by consensus by the members of the Expert Mechanism.

76. The members of the Expert Mechanism also adopted the provisional agenda of the ninth session (see annex II).

Annex I

List of participants

States Members of the United Nations represented by observers

Algeria, Argentina, Armenia, Australia, Austria, Bangladesh, Bolivia (Plurinational State of), Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Denmark, Egypt, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, India, Indonesia, Japan, Latvia, Luxembourg, Malaysia, Mauritius, Mexico, Morocco, Myanmar, New Zealand, Niger, Norway, Panama, Paraguay, Peru, Philippines, Republic of Moldova, Russian Federation, South Africa, Spain, Sri Lanka, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of).

Non-member State represented by an observer

Holy See

United Nations mandates, mechanisms, bodies, specialized agencies, funds and programmes represented by observers

International Labour Organization; Special Rapporteur on the rights of indigenous peoples; Permanent Forum on Indigenous Issues; United Nations Educational, Cultural and Scientific Organization; United Nations Population Fund; World Bank; World Intellectual Property Organization.

Intergovernmental organizations, regional organizations and mechanisms in the field of human rights represented by observers

Council of Europe; European Union; Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean.

National and international human rights institutions represented by observers

Australian Human Rights Commission, International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, New Zealand Human Rights Commission, Human Rights Commission of Malaysia.

Academics and experts on indigenous issues represented by observers from the following institutions

The City Law School, City University London; L'École des hautes études en sciences sociales; Leuphana University of Lüneburg; Structural Analysis of Cultural Systems, Berlin; Te Pūtahi-a-Toi (School of Maori Art, Knowledge and Education), Massey University; Universidade Federal de São Carlos; Universidad Carlos III de Madrid; Universidad de Deusto; University of Amsterdam; University of Ottawa.

Non-governmental organizations and indigenous nations, peoples, organizations and parliamentarians

Africa Culture International (Human Rights); African Commission of Health and Human Rights Promoters (CAPSDH); Aliansi Masyarakat Adat Nusantara; Articulação dos Povos Indígenas do Brasil; Asia Indigenous Peoples Pact; Assemblée des Arméniens d'Arménie occidentale; Assembly of First Nations; Association Culturelle ATH Koudia de Kabylie; Association Culturelle Tamazgha; Association Espoir pour les Batwa; Lawyers' Association for the Human Rights of Nepal's Indigenous Peoples (LAHURNIP); Association of Kolski Saamis; Association of Russian-language indigenous people of Latvia; (Russian) Association of Small Indigenous Peoples of the North; Association on American Indian Affairs; Association Oyiwane; Association pour l'Intégration des Peuples Autochtones; Association Racines; Association Shoria; Bharat Munda Samaj; Bunong Association for a Good Future; Bureau of Consultation for West Papua Indigenous Community Development; Cabildo Indígena del Resguardo Kankuamo; Canadian Friends Service Committee; Centre for First Nations Governance; Centre for Support of Indigenous Peoples of the North (CSIPN); Centro de Estudios e Investigaciones Mapuche; Chippewas of the Thames First Nation; Comisión de Asuntos Indígenas - Congreso de la Unión de México; Comisión de Juristas Indígenas en la República Argentina; Communauté des Potiers du Rwanda; Comunidad Indígena del Pueblo Tupi Guarani "Cacique Hipolito Yumbay"; Congrès populaire Coutumier Kanak; Consejo de todas las Tierras; Consejo Indio de Sud America; Consejo Regional Indígena del Tolima (CRIT); Coordinadora de Organizaciones Indígenas de Amazonia (COICA); Coordinadora Andina de las Organizaciones Indígenas de la Cuenca del Amazonas (CAOI); Cultura de Solidaridad Afro-Indígena; Cultural and Development Society; Cultural Survival; Dewan Adat Papua; Drumbeat Media; Endorois Welfare Council; Enlace Continental de Mujeres Indígenas; Association Espoir pour les Jeunes Batwa; Federación Indígena Empresarial y Comunidades Locales de Mexico (CIELO); Federation of American Women's Clubs Overseas; Friends World Committee for Consultation (Quakers); First Nations Summit; Fundación Paso a Paso; Grand Council of the Crees; Herri-Topa (Rencontre entre les peuples); Human Rights Advocates; Human Rights Institute; IDU Mishmi Cultural and Literary Society; Il'laramatak Community Concerns; Ilukim Sustainability Solomon Islands; Incomindios; Indian Law Resource Center; Indigenous Information Network; Indigenous Movement; Indigenous Peoples and Nations Coalition; Indigenous Peoples' Center for Documentation, Research and Information (DOCIP); Indigenous Peoples of Africa Coordinating Committee (IPACC); Indigenous Women and Children Foundation; Indigenous World Association; International Indian Treaty Council (IITC); International Work Group for Indigenous Affairs (IWGIA); Internationale Touarègue; Inter-regional public movement of Komi Peoples – "Komi Voytyr"; Inuit Circumpolar Council; Inuit Tapiriit Kanatami; Jaringan Orang Asal SeMalaysia (The Indigenous People Network of Malaysia - JOAS); Kapaeeng Foundation; Karbi Human Rights Watch; Kariros; Kera - an Initiative for Cultural and Ecological Security (KICES); Khmers Kampuchea Krom Federation; Laguna-Acoma Coalition for a Safe Environment; MADALAH (Making a Difference and Looking Ahead); Maloca Internationale (MAIN); Massai Experience; Monitoring Mechanism of the National Iwi Chairs Forum; Movement for the Survival of the Ogoni People (MOSOP); Movimiento Indígena de Nicaragua; Mujeres Mayas Majawil Q'ij; Naga People's Movement for Human Rights; Na Jaqna Conservancy and Community Forest; National Alliance of Indigenous Peoples in the Philippines (Kalipunan Ng Katutubong Mamamayan Ng Pilipinas - KATRIBU); National Congress of American Indians; National Congress of Australia's First Peoples; National Indian Youth Council; Native American Rights Fund; Nepal Laborious Society Centre; Nepal Thami Society; Nisga'a Lisims Government; Ochapowace Nation; Organización de Mujeres Guatemaltecas "Mama Maquin"; Organisation des Nations Autochtones de Guyane; Organizacion Nación

Purhepecha Zapatista Michoacán; Organización de Jóvenes Indígenas de la región Ucayali (OJIRU); Organización Nacional Indígena de Colombia (ONIC); Organizacion Social Ngäbe-Buglé para el Desarrollo Humano Integral; Pikhumpogan Dlibon Subanen; Porgera Landowners Association; Programme Intégré pour le Développement du peuple Pygmée au Kivu (PIDP); Rehoboth Community of Namibia; Réseau de peuples autochtones d'Afrique; Saami Council; Sami Parliament of Norway; SAMUSA (Network of Indigenous Organisations in Cameroon); Saniri Alifuru (Alifuru Council); Social Economic and Governance Promotion Centre; Solidarité pour la Promotion des Femmes Autochtones; Tebtebba Foundation; Teemashane Community Development Trust; Tehue Manu Community – Maori Rapa Nui; The Hopi Tribe Nation; Tin Hinane; Union of British Columbia Indian Chiefs; Unión Wixárika de Centros Ceremoniales de Jalisco, Durango y Nayarit; Voices for Peace; World Barua Organization; World Uyghur Congress; World Indigenous Tourism Alliance; Youth Public Movement of Mordovian People.

Annex II

Provisional agenda of the ninth session

1. Election of officers.
2. Adoption of the agenda and organization of work.
3. Follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism.
4. Panel discussion on the promotion and protection of the rights of indigenous persons with disabilities.
5. Human rights of indigenous peoples in relation to business enterprises.
6. Thematic study and advice to be prepared pursuant to the forthcoming resolution of the Human Rights Council on human rights and indigenous peoples.
7. United Nations Declaration on the Rights of Indigenous Peoples.
8. Follow-up on thematic studies and advice.
9. Proposals to be submitted to the Human Rights Council for its consideration and approval.
10. Adoption of the report.